

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JUAN E. FITCHETT, #146821,

Petitioner,

v.

CASE NO. 10-10360

HONORABLE VICTORIA A. ROBERTS

GREGORY McQUIGGIN,

Respondent.

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**ORDER DENYING PETITIONER'S MOTIONS FOR APPOINTMENT  
OF COUNSEL AND FOR A DECLARATORY JUDGMENT  
AND DIRECTING THE PARTIES TO SHOW CAUSE WHY THIS CASE  
SHOULD NOT BE TRANSFERRED TO THE COURT OF APPEALS  
AS A SECOND OR SUCCESSIVE PETITION**

Petitioner Juan E. Fitchett has filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254. The petition challenges Petitioner's Saginaw County conviction for second-degree murder. Petitioner alleges that he was sentenced to life imprisonment on October 1, 1976. He seeks habeas corpus relief on grounds that (1) he was not arraigned within forty-eight to seventy-two hours of his arrest and (2) the felony complaint charging him with the crime was defective. Currently pending before the Court are Petitioner's motion for appointment of counsel [Dkt. #6] and his motion for a declaratory judgment and immediate release from custody [Dkt. #5].

In his motion for appointment of counsel, Petitioner asks to have a federal defender appointed to represent him in this matter. Petitioner alleges that his case is complex and that he cannot retain counsel. "[T]here is no constitutional right to counsel in habeas proceedings," *Post v. Bradshaw*, 422 F.3d 419, 425 (6th Cir. 2005), and the interests of justice do not require appointment of counsel in this case. Therefore, Petitioner's motion for appointment of counsel [Dkt. #6, Feb. 24, 2010] is **DENIED**.

In his other motion, Petitioner seeks a declaratory judgment and immediate release from custody on the grounds that Respondent has deceived the Court, violated the Court's order for responsive pleading, and filed a premature motion to dismiss. In support of these allegations, Petitioner has provided the Court with the State's Motion to Dismiss in the case of *Fitchett v. McQuiggin*, case number 09-13026. The Honorable Robert H. Cleland granted the motion to dismiss in that case on the basis that the habeas petition was time-barred. Petitioner maintains that the State filed its motion to dismiss in the wrong case, using an incorrect name for him, the wrong case number, and the wrong judicial officers.

To date, no motion to dismiss has been filed in this case, and the responsive pleading is not due until August 2, 2010. The State, moreover, appears to have filed a proper motion to dismiss in case number 09-13026. Respondent therefore has not violated the Court's Order for Responsive Pleading, and Petitioner's motion for a declaratory judgment and immediate release from custody [Dkt. #5, Feb. 24, 2010] is **DENIED**.

Having been advised of case number 09-13026, the Court now believes that the pending petition may be a second or successive petition. The petitioner's surname in this case is the same as the petitioner's surname in case number 09-13026, and although the first name for the petitioner in case number 09-13026 is "John," that is a common translation for the name "Juan." More importantly, the petitioner's prison identification number in both cases is 146821. The petitioner's address in both cases is the same, and both cases challenge a 1976 Saginaw County conviction for second-degree murder. Accordingly, the parties are **ORDERED** to show cause within **twenty-one (21) days** of the date of this order why the habeas petition in this case should not be transferred to the United States Court of Appeals for the Sixth Circuit as an unauthorized

second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997).

s/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: July 8, 2010

The undersigned certifies that a copy of this document was served on Juan Fltchett and Attorney General's Office by U.S. Mail on July 8, 2010.

s/Linda Vertriest  
Deputy Clerk